

PHYSICIAN ASSISTANT COMMITTEE

INITIAL STATEMENT OF REASONS

Hearing Date: 1 May 2008

Subject Matter of Proposed Regulations:

Section Affected: 1399.571.

Specific Purpose of each adoption, amendment, or repeal:

The existing regulation requires that the executive officer take into consideration factors listed in subdivision (b)(3) of Business and Professions Code Section 125.9 and also the extent to which a person has mitigated or attempted to mitigate the damage or injury caused by the violation when determining the amount of a fine.

This proposal would add specific factors for the executive officer to consider when determining the fine amount.

The existing regulation specifies that the executive officer may issue a citation for violations of the Physician Assistant Practice Act. The fine for a violation shall be from \$100 to \$2500.

This proposal would increase the maximum fine amount to \$5000.

This proposal would also require the executive officer to consider specific criteria when levying fine amounts from \$2501 to \$5000.

The committee also proposes to add to the list of Citable Offenses Business and Professions Code Section 119 (Misdemeanors pertaining to use of licenses).

Factual Basis/Rationale

The committee's mandate is to protect the health, safety, and welfare of California consumers. The committee's highest priority is to protect consumers by utilizing its authority to investigate complaints and take appropriate disciplinary action against licensees and applicants for licensure who endanger the health and safety of consumers.

The committee uses the issuance of citations and fines as a tool to resolve complaints or violations of existing law or regulations that do not rise to the level of disciplinary action.

Section 125.9 and 148 of the Business and Professions Code permit the Physician Assistant Committee to establish, by regulation, a citation and fine program.

The existing regulation requires that the executive officer take into consideration factors listed in Section 125.9(b)(3) of the Business and Professions Code when determining fine amounts. The executive officer is also required to consider the extent to which a person has mitigated or attempted to mitigate any damage or injury caused by a violation.

The proposed change would expand and make specific factors to be considered when determining fine amounts. The factors listed in the code are vague and do not take into consideration additional factors that could be used to appropriately determine the fine amounts.

Senate Bill 362 (Stats. 2003, Chapter 788; Figueroa) amended Business and Professions Code Section 125.9 increasing the maximum fines assessed from \$2500 to \$5000.

The committee proposes assessing the maximum fine from \$2501 to \$5000 where a violation has an immediate relationship to the health and safety of another person, the cited person has a history of two or more prior citations of the same or similar violations, the citation involves multiple violations that demonstrate willful disregard of the law, or the citation involves a violation or violations perpetrated against a senior citizen, a person under 18 years of age, or disabled person.

The committee proposes to expand the list of Citable Offenses to include Business and Professions Code Section 119. (Misdemeanors pertaining to use of licenses) The Department of Consumer Affairs always advises consumers to check and ensure that a health care practitioner has the appropriate license. This proposed change will permit the committee to issue a citation if Section 119 is violated.

On 6 February 2008 the committee voted to set the matter for public hearing.

Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any):

SB 362.

Business Impact

This regulation will not have a significant adverse economic impact on businesses because it only affects individual licensees who have been issued a citation and fine.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

1) Not amend regulation. This alternative was rejected because the committee's mandate is to protect the health, safety, and welfare of California consumers. Enhancing the citation and fine regulations will give the committee additional tools to ensure that appropriate action will be taken against physician assistant licensee's who violate the Physician Assistant Practice Act any regulations adopted thereto.

2) Amend regulations as proposed. The committee determined that this alternative was the most feasible because these proposed regulatory changes would enhance the committee's citation and fine program.

